

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

KARIN E. LAINE,	:	APPEAL NO. C-080133
		TRIAL NO. A-0506683
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
CHRISTOPHER P. FINNEY, ESQ.,	:	
	:	
PETER A. SABA, ESQ.,	:	
	:	
SEAN P. DONOVAN, ESQ.,	:	
	:	
and	:	
FINNEY, STAGNARO, SABA &	:	
KLUSMEIER, CO., L.P.A.	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant Karin Laine was the one-half owner and vice president of Half, Inc., and Half, Ltd., (collectively as “Half”); and Eugene Utz was the president and owner of the other half of Half. Utz and Laine reached an impasse on how Half should be run, and Laine eventually resigned as vice president but kept her one-half interest. In March 2004, Laine sued Utz and Half asserting claims of breach of contract, unpaid wages, and sexual harassment. In response, Utz retained defendant-appellee Finney, Stagnaro, Saba & Klusmeier Co., L.P.A to represent Half, and later retained separate counsel for his personal representation. The remaining defendants-appellees Christopher Finney, Peter Saba, and Sean Donovan are partners in the law firm (defendants-appellees are

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

collectively referred to as “Finney L.P.A.”). Finney L.P.A., on behalf of Half, answered Laine’s complaint and counterclaimed that Laine had breached a noncompete agreement; had stolen, converted, and misappropriated proprietary information and other company assets; had interfered with business relationships of Half; had breached her fiduciary duties; and had usurped business opportunities.

Laine objected to Finney L.P.A.’s representation of Half in *Laine v. Utz*, the underlying lawsuit. In an October 30, 2002, letter, Laine claimed that she had not consented to Finney L.P.A.’s representation of Half; and that by virtue of her one-half ownership of the company along with her lack of consent, Finney L.P.A., was not authorized to represent Half. Laine made this argument before the trial court and lost. The court determined that Utz as president of Half could exercise the corporate will and retain Finney L.P.A. Finney L.P.A.’s representation of Half was the basis of Laine’s August 16, 2005, malpractice suit.

The wrong, as alleged in Laine’s malpractice complaint, was that Finney L.P.A., “act[ed] without proper authority [when it sued her] purportedly on behalf of Half, Inc., and Half, Ltd.” After entering summary judgment for Finney L.P.A., the present appeal followed. We affirm the entry of summary judgment—Laine’s malpractice suit was filed too late, and the issue whether Finney L.P.A., was authorized to represent Half had already been resolved by the trial court in the underlying suit.

### **I. The Statute of Limitations**

On October 30, 2002, Laine wrote Finney L.P.A., alleging that its representation of Half was unauthorized and concluding that if it did not cease its representation of Half, she would sue for legal malpractice. Laine sued for malpractice on August 16, 2005. The time limit to sue for legal malpractice was within one year after the cause of action had

accrued.<sup>2</sup> The statutory time begins to run when there is a cognizable event whereby the client discovers or should have discovered that the injury was related to an attorney's act or non-act and the client is put on notice of a need to pursue its possible remedies against the attorney; or when the attorney-client relationship terminates, whichever occurs later.<sup>3</sup> The accrual date cannot have been when the attorney-client relationship terminated because Finney L.P.A., never represented Laine—Finney L.P.A., represented Half. So we must now decide the date of a cognizable event.

A cognizable event is one sufficient to “alert a reasonable person that a questionable legal practice may have occurred.”<sup>4</sup> The injured party need not be aware of the full extent of the injury for a cognizable event to have occurred.<sup>5</sup> Here there are at least two October 2002 dates that could be considered cognizable events for purposes of Laine's malpractice action—and both dates are fatal to her claim. As we have noted, Laine's claim for malpractice against Finney L.P.A., arose from the alleged “unauthorized representation” of Half. So the cognizable event would have been either the date that the answer and counterclaim was filed, October 18, 2002; or on October 30, 2002, the date that Laine sent the letter alleging that she had a colorable malpractice claim against Finney L.P.A. Because the malpractice complaint was filed on August 16, 2005, it did not comply with the one-year limitation statute. Laine's complaint was filed outside of the time allowed to bring a malpractice action, and the trial court properly entered judgment for Finney L.P.A.

Laine's claims likewise fail on the basis of collateral estoppel. Collateral estoppel precludes relitigation of an issue that has been “actually and necessarily litigated and

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<sup>2</sup> R.C. 2305.11(A).

<sup>3</sup> *Zimmie v. Calfee, Halter & Griswold* (1989), 43 Ohio St.3d 54, 538 N.E.2d 398.

<sup>4</sup> *Id.* at 58.

<sup>5</sup> *Id.*

determined in a prior action which was based on a different cause of action;”<sup>6</sup> and it operates to “preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed on by a court of competent jurisdiction.”<sup>7</sup>

As we have noted, the gravamen of Laine’s malpractice complaint was that Finney L.P.A., had no authority to represent Half, and thus it committed malpractice by representing the company. In the underlying lawsuit, the court determined that Utz had authority to hire Finney L.P.A., to represent Half. Laine did not appeal that determination. Instead, she later filed a separate malpractice suit alleging a cause of action based on factual allegations that had already been deemed appropriate by the trial court in the underlying case. Utz had the authority to hire Finney L.P.A., to represent Half, and Laine was estopped from raising that issue in the malpractice suit.

Because Laine’s case is both barred by time and under a collateral-estoppel theory, we do not address whether Finney L.P.A., owed any duty to Laine.

Having found this appeal meritless, we affirm the entry of summary judgment for Finney L.P.A.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., PAINTER and HENDON, JJ.**

*To the Clerk:*

Enter upon the court’s journal on January 7, 2009  
by order of the court \_\_\_\_\_.  
Presiding Judge

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<sup>6</sup> See *State ex rel. Gannett Satellite Info. v. Cincinnati City Counsel* (2000), 137 Ohio App.3d 589, 739 N.E.2d 387.

<sup>7</sup> *Consumers’ Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St.3d 9, 475 N.E.2d 782.